

REMARKS

Applicant expresses appreciation to the Examiner for consideration of the subject patent application. This amendment is in response to the Office Action mailed September 16, 2005. Claims 1-3 were rejected.

Claims 4-6 remain in the application. Claims 1-3 were originally presented. Claims 1-3 have been canceled without prejudice. Claims 4-6 have been added.

After careful consideration of the outstanding Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this time respectfully requested.

Original Claims 1 through 3 have been cancelled absent prejudice to the novel and unobvious subject matter recited therein in favor of new independent Claim 4 and dependent Claims 5 and 6. Independent Claim 4 has been presented to specifically comply with 35 U.S.C. §112 and define the invention in a manner which clearly distinguishes the same over the two primarily applied patents to Lee (5,335,808) and Hall (5,947,317). However, before considering the latter patents, reference is made to Claim 4 which initially recites conventional structure of an easy-opening can end, such as its end panel, score line, the latter defining an openable panel portion, a pull tab; the nose, medial portion and handle thereof; and the location of the nose adjacent the score line. More specifically, the convexly upwardly projecting protrusion of the end panel is recited as “underlying and contiguous **said handle**” followed by “**means** defined by the material of said protrusion **for** elastically deforming said convexly upwardly projecting protrusion to an upwardly concavely opening and downwardly projecting protrusion upon the application of a downwardly directed manually applied force to said convexly upwardly projecting protrusion to form a gap between said handle and said elastically deformed upwardly concavely opening protrusion incident to severing said score line by imparting a lifting force to said handle.” Quite clearly the convexly upwardly projecting protrusion both underlies and is contiguous the handle and through the means latter-quoted effects the transition thereof through elastic deformation to an upwardly concavely opening protrusion. As will be noted immediately hereinafter, the latter recited combination in and of the easy-opening can end of Claim 4 finds no counterpart in the prior art.

At page 2 of the outstanding Office Action, paragraph 4 thereof, the Examiner rejected Claim 1 “under 35 U.S.C. 102(b) as being anticipated by Lee (5,335,808). Lee discloses, in figs. 3 and 4, a can lid comprising a collapsible protrusion 36 protruding upward from the can lid, and a handle 24.” With due respect, though the Examiner has accurately described “a collapsible protrusion 38 projecting upwardly from the can lid,” describing the element “24” as “a handle” is incorrect. The Lee specification states:

“Rivet 20 approximately divides the ‘one piece’ lift tab 16 into two portions, an elongated **lift arm 22** and a shorter **drive arm 24**. Lift arm 22 preferably defines a finger hole 26 adjacent the free end 28 thereof. Drive arm 24 preferably includes a striker or point 30 which is located at the free end 32 thereof.” (Emphasis added)

Subsequently, the description continues as follows:

“When it is desired to open a can 42 (FIG. 4) to which lid 10 is attached as a top cover, in order to remove the contents, such as a soft drink, therefrom, convex surface 36 and drive arm 24 are depressed by a finger to the inverted position shown in FIG. 4. This simultaneously lifts the opposite end of tab 16 well above plate 12 as indicated by the dotted outline in FIG. 4, so that arm 22 can be easily grasped by one or more fingers, whether or not finger hole 26 is used.”

Because of the latter structure the “lift tab 16 can then be easily lifted further, being in a mechanically efficient position for rotating striker 30 down hard against the convex surface 36 and forcing the rupture of plate 12 at score line 40.” Therefore, the “lift arm 22” is the handle while the “shorter drive arm 24” includes the nose for effecting rupture of the score line. With due respect, the Examiner has misdescribed the components of the Lee patent.

So that there is no mistake, it is repeated that Claim 4 recites “said nose adjacent said score line” and the “convexly upwardly projecting protrusion underlying and contiguous said handle.” The latter structure is effectively the reverse of that disclosed in the Lee patent in which the upwardly convex protrusion 36 is not only in underlying contiguous relationship to the nose or drive arm 24 but the upwardly convex protrusion 34 is also disposed within the boundary of the score line 40 which defines the removable area 38 (See Fig. 1). Accordingly, new independent Claim 4 is neither anticipated nor rendered obvious by the patent to Lee.

At page 2, paragraph 5 the Examiner also rejected Claims 1 and 2 “under 35 U.S.C. 102(b) as being anticipated by Hall (5,947,317). Hall discloses, in figs. 5 and 6, a can lid comprising a collapsible protrusion 10 protruding upward from the can lid, and the handle 11.”

With due respect, the Examiner has once again misdescribed the content of the prior art because reference numeral “10” does not define a “collapsible protrusion,” particularly not a protrusion which is part of the end panel or top 2. In the very first paragraph of the description of the preferred embodiment the patentee states “An actuator 9 includes a pressure tab 10 on one end and a finger loop 11 on the other end as before.” In the next paragraph “the end of actuator 9 with the pressure tab 10 is bent upwardly away from the central section of the beverage container top 2 at a slight angle to provide a fulcrum point indicated by arrow 13. The central section of the beverage can is **flat**.” Under the caption “OPERATION,” the first phase of opening the end panel comprises “pressing down with a finger or thumb 14 on the pressure tab 10. This causes rotation of the actuator 7 around fulcrum 13 and slight lifting of the opposite finger loop 11” (handle). Therefore, the Examiner is incorrect in stating that the “can lid” of Hall comprises a “collapsible protrusion 10” because the latter is simply the drive end or nose of the pull tab or actuator 9.

With due respect, the patent to Hall does not disclose, as is recited in Claim 4, “said end panel including a convexly upwardly projecting protrusion underlying and contiguous said handle.” Moreover, the last means-plus-functional limitation of Claim 4 finds no counterpart in the Hall patent.

In view of the foregoing, the formal allowance of Claim 4 over each of the Lee and Hall patents is believed to be in order and is herewith respectfully requested.

Upon the formal allowance of Claim 4, the allowance of dependent Claims 5 and 6 should follow, and the early passage of this application to issue would be most appreciated.

CONCLUSION

In light of the above, Applicant respectfully submits that pending claims 4-6 are in condition for allowance. Therefore, Applicant requests that the rejections and objections be withdrawn, and that the claims be allowed and passed to issue. If any impediment to the allowance of these claims remains after entry of this Amendment, the Examiner is strongly encouraged to call Garron M. Hobson at (801) 566-6633 so that such matters may be resolved as expeditiously as possible.

Check No 24519, in the amount of \$450.00, is enclosed pursuant to 37 C.F.R. § 1.17(a), for a two month extension of time pursuant to 37 C.F.R. § 1.136. Three claims were added (claims 4-6), including one independent claim (claim 4), while three claims were canceled (claims 1-3), including one independent claim (claim 1). Therefore, no additional fee is due.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 20-0100.

DATED this 16th day of February, 2006.

Respectfully submitted,



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